



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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David B. Cohen
Mayor

TO: Zoning Board of Appeals

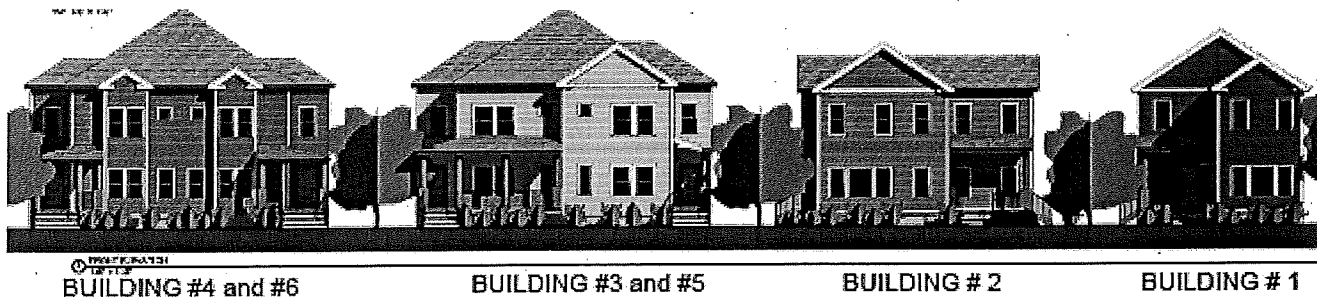
FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner *CH*
Alexandra Ananth, Senior Planner
Trisha Kenyon Guditz, Housing Program Manager

DATE: November 20, 2009

SUBJECT: Petition #15-09 of Parkview Homes, LLC, 165 Chestnut Hill Ave, Unit #2, Brighton, MA 02135, requesting issuance of a comprehensive permit pursuant to M.G.L. c. 40B, secs. 20-23 in order to construct a 10-unit development at 192 Lexington Street, Newton, of which six units will be affordable to households earning up to 80% of area median income and four units will be affordable to households earning up to 100% of area median income. The property is located in a Single Residence 3 district in Auburndale.

CC: Mayor David B. Cohen
R. Lisle Baker, President, Board of Aldermen
Alderman Jay Harney, Alderman Leonard J. Gentile, and Alderman Amy Mah Sangiolo
Philip B. Herr, Chair, Newton Housing Partnership

The purpose of this memorandum is to provide the Zoning Board of Appeals and the public with technical information and planning analysis that may be useful in the comprehensive permit decision-making process of the Zoning Board of Appeals. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at the public hearing that the Zoning Board of Appeals will consider in making its decision.



Proposed Elevations

EXECUTIVE SUMMARY

The petitioner, "Parkview Homes, LLC." is requesting a comprehensive permit to allow for the construction of ten units for-sale including two single-family detached units and four two-family townhouse-style units to be called "Parkview Homes" on land located at 192 Lexington Street in Auburndale. The 49,960 sq. ft. site (1.14 acres) is zoned Single Residence 3 and is currently developed with a split-level single-family residential structure circa 1963 with access from Lexington Street and an in-ground swimming pool. The proposed site plan includes 21 parking stalls associated with the ten units. Nine of the ten units are proposed to have three bedrooms and 2½ baths in 1,450 sq. ft. ***Although not currently shown on submitted plans, the petitioner has stated that one of the ten units, Building #2, will be designed and constructed to be fully accessible for individuals with mobility impairments.*** The accessible unit, which is approximately 1,100 sq. ft., will have two bedrooms and at least one bathroom and possibly an additional half bathroom.

The petitioner is proposing that six of the ten units have sales prices set at 75% of area median income and restricted to households earning up to 80% of area median income ***(\$66,150 for a four-person household – effective March 2009).*** The other four units are proposed to have sales prices set at 95% of area median income and are restricted to households earning up to 100% of area median income ***(\$90,200 for a four-person household – effective March 2009).***

The petitioner has had numerous meetings with the Planning Department, Newton Housing Partnership, and Community Preservation Committee throughout the development review process and the resulting site plan reflects many of the City's comments and requested changes. The Planning Department believes the site is suitable for ten units with minimal impact on the surrounding neighborhood. The proposed units have traditional detailing on the façades with covered front porches and hip roofs that help to impart a sense of human scale to the project. All of the buildings are detailed differently, yet blend together well. The petitioner is proposing many sustainable design and energy conservation measures into the project, is proposing to repave the adjacent footpath between Albert Road and the Burr Elementary School, and will replace the deteriorating fencing. The Planning Department believes that the availability of additional three-bedroom units in the City's affordable housing inventory increases the opportunities for new first-time homebuyer families to live in Newton. Finally, the petitioner is proposing to deed a portion of site to the City, approximately 2,574 sq. ft., that includes the existing footpath (a portion of which is located on the subject property) and the triangle of land immediately east of the path. Although this would reduce the petitioner's lot area the proposed development still appears to fit well onto the site.

The petitioner has submitted a list of zoning and non-zoning reliefs requested from the Zoning Board of Appeals (ATTACHMENT "A"). In addition to the reliefs requested, the petitioner will also need relief from the rear setback requirement if the City accepts the proposed land grant noted above.

I. ZONING BOARD ACTION

The City's Zoning Board of Appeals (ZBA) will hear this petition on Tuesday, November 24, 2009. The ZBA is required to render a decision, based on a majority vote of the Board within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. *The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.*

The ZBA may dispose of the application in one of the following ways:

- 1) approve a comprehensive permit on the terms and conditions set forth in the application,
- 2) deny a comprehensive permit as not consistent with local needs, or
- 3) approve a comprehensive permit with conditions with respect to height, site plan, size, shape or building materials that do not render the construction or operation of such housing uneconomic.

A comprehensive permit is designed to streamline administrative reviews on the local level. Other regulations required by the laws of the Commonwealth of Massachusetts may apply.

II. CHARACTERISTICS OF SITE AND NEIGHBORHOOD

A. Site

The site consists of a 49,960 sq. ft. lot located at 192 Lexington Street, and is currently improved with a one-story, single-family dwelling. The lot is accessed via a driveway from Lexington Street and is a through lot with additional frontage on Albert Road, although there is currently no vehicular access from this point. The site is relatively level ranging from elevation 55' to elevation 58'. The petitioner has stated that the lot contains many miscellaneous odds and ends and machinery equipment. This has lead to the requirement for a c.21E review (environmental site assessment), which reports that the soils may be contaminated and some fill will need to be removed. The land also contains an in-ground pool that is covered and no longer used.

B. Neighborhood and Zoning

The site is located within a large Single Residence 3 District. The neighborhood consists of a mix of one- and two-story, single- and two-family residences and some larger apartment buildings. Other uses within the neighborhood include the Burr Elementary School immediately southwest of the subject property, and land owned by the City of Newton. Flowed Meadow Conservation Area and the former City landfill are located across Lexington Street northwest of the subject property. Across Lexington Street to the north are a number of larger multi-family apartment buildings.

The petitioner's lot is significantly larger than the other single- and two-family lots in the neighborhood, which range from 5,000 to 16,000 sq. ft. in area; the average size of these lots is 10,690 sq. ft. Lots containing the apartment buildings across Lexington Street range from 40,000 sq. ft. to 80,000 with an average of 1,684 sq. ft. per unit (*ATTACHMENT "B"*). Please see the attached Neighborhood Comparison Chart prepared by the Planning Department using information taken from the Assessor's Database.

III. COMPREHENSIVE PLAN

The proposed project at 192 Lexington Street is consistent with the City's housing goals, as described in the *Newton Comprehensive Plan*. The *Newton Comprehensive Plan* advocates for undertaking positive actions to secure a diversity of housing to meet the needs of a diverse population, including homeownership opportunities. Increases in the City's housing stock for low-, moderate-, and middle-income families should include houses affordable to first-time

homebuyers, as well as affordable homes for senior citizens, families, and people with disabilities. It further recommends leveraging our limited local resources with as much federal and state assistance as possible. The proposed project includes a total of \$915,866 in federal funds, as well as \$2,041,000 in Community Preservation Funds. Furthermore, the availability of additional three-bedroom units in the City's affordable housing inventory increases the opportunities for new first-time homebuyer families to live in Newton.

IV. ANALYSIS

A. Chapter 774 Criteria – Assessment of Housing Needs

Chapter 774 of the Acts of 1969 (M.G.L. c.40B s.20-23) establishes three criteria by which the need for subsidized housing in a particular community is measured. These three criteria are: 1) 10% of housing units in a community are utilized for subsidized housing; 2) 1.5% or more of the land area zoned for residential, commercial or industrial use (excluding publicly-owned land) contains subsidized housing; and 3) the land area developed for subsidized housing in any one calendar year does not exceed 3/10 of one percent of total City land (as determined by #2 above) or 10 acres, whichever is larger.

The State-mandated goal for affordable housing is 10% of a community's housing stock. According to the City's Planning Department, Newton has a total of 2,417 affordable housing units, or 7.6% of the total housing units (31,807 according to the 2000 U.S. Census).

This project would increase the supply of affordable housing in Newton by ten additional units, although only six of the units will be eligible to be included on the State Subsidized Housing Inventory (SHI). The four units available to eligible first-time homebuyers whose gross annual household incomes are up to 100% of area median income exceed the income threshold for inclusion on the SHI (*but do meet the definition of "community housing" under the Community Preservation Act – M.G.L. c. 44B*).

The Newton Housing Partnership has discussed this project at five separate meetings beginning in November 2008 and met with the petitioner a total of three times. The Newton Housing Partnership had an opportunity to review the site plans and project financials throughout the multi-month review process. A letter of support from the Newton Housing Partnership dated November 12, 2009, is attached (**ATTACHMENT "C"**).

The sources of committed project funding including federal Community Development Block Grant (CDBG) and HOME Program funds and local Community Preservation Funds, which have been appropriated but not obligated, ***require that all ten units be deed-restricted so that they will remain affordable in perpetuity.***

The amount of subsidized housing in the City of Newton does not meet either of the first two above-mentioned criteria. The 2,417 subsidized units in the City represent 7.6% of the City's 31,807 total housing units. The amount of land (excluding publicly-owned land) that contains subsidized housing is approximately 26 acres and represents less than one-half of one percent (58.66 acres) of the City's 11,731 acres of total land area. (*Source: Massachusetts Department of Housing and Community Development website*).

In addition, the proposed development would not result in development of housing on sites that constitute more than 3/10 of one percent of the total land area in one year (21.68 acres). ***No new subsidized housing units were constructed in 2009.*** The ten Parkview Homes' units are proposed to be under construction starting in spring 2010 with project completion and full occupancy expected 12 months later in spring 2011.

B. Review Criteria

Massachusetts General Laws Chapter 40B, Section 21, allows certain organizations, including non-profits and limited dividend organizations, to submit a single application to the Zoning Board of Appeals for a comprehensive permit to construct low/moderate-income housing. In reviewing the application for a Comprehensive Permit, the ZBA shall consider the following:

1. *The health and safety of the residents of the proposed housing and the current residents of the City*

a. Structural soundness of the proposed buildings

The submitted site plans depict the construction of 10 new single-family and duplex units of wood-frame construction. Foundations will be poured fly-ash concrete with HardiPlank cementitious clapboard siding and asphalt tab roofing.

The Planning Department has no concerns with the structural soundness of the proposed buildings at this time. Prior to the issuance of any building permits, the petitioner will be required to file final construction drawings and details; these will need to be stamped by a licensed architect and/or structural engineer.

b. Adequacy of sewage disposal

The Associate City Engineer will provide a report prior to the public hearing.

c. Adequacy of handling water runoff

The Associate City Engineer will provide a report prior to the public hearing.

d. Adequacy of fire protection

The submitted site plan has been reviewed and stamped "approved" by the City's Fire Department (***ATTACHMENT "D"***). The Assistant Chief of Operations notes in his review memorandum that Buildings 3, 4, 5, and 6 are sprinkled and that a fire hydrant will be installed along the roadway servicing the property. An emergency egress leading to Albert Road with Knox lock will be provided and the gate must be kept free of snow and debris at all times. The Fire Department will review plans relative to fire prevention matters during the building permit process.

e. Adequacy of handling traffic generated by the project on adjacent streets

The petitioner submitted a traffic analysis performed by MDM Transportation Consultants, Inc. MDM believes the proposed ten-unit residential development to be a low traffic generator with less than five new vehicle trips

per hour with no material impacts to area roadways anticipated. Additionally, the report notes that the existing pedestrian-activated traffic signal at Lexington Street will not be materially impacted by the proposed residential development project. The City Traffic Engineer and Planning Department believe that sight lines are adequate on Lexington Street and the adjacent streets should adequately handle the additional traffic generated by the ten new housing units.

f. Proximity of the site to industrial activities which might affect the health of the proposed residents

There are no active industrial activities within this neighborhood that would affect the health of the potential residents.

2. Height, bulk and placement of the proposed buildings, accessory structures and improvements

a. Physical characteristics of the proposed housing

Two of the ten residential units are single-family houses with the balance being two-family duplex or townhouse-style units. The single-family residence closest to Lexington Street will be oriented towards the street while the other units will be laid out along a new access drive that connects through to Albert Road. Although the access drive connects to Albert Road this access point will have a gate with Knox lock for emergency vehicle use only. All traffic will enter and exit the site via Lexington Street. All three duplex units are laid out so as to have views of the adjacent Burr Elementary School Park from the backside of the residences.

All of the units are two stories high and will be 1,450 sq. ft. three-bedroom units with the exception of Building #2 which is proposed to be designed as a two-bedroom unit for individuals with mobility impairments.

All of the buildings differ slightly in detailing, but there is a consistency to height, siding, window type, roof pitch, and porch detailing. The Planning Department believes that there is sufficient detailing on the first story to lend a pedestrian scale to the project. The petitioner is proposing to clad the structures with HardiPlank clapboard and asphalt shingle roofs. The Planning Department notes that only front elevations have been submitted and that prior to the issuance of any building permits the petitioner would be expected to submit a copy of all elevations to the Director of Planning and Development for design consistency and approval. The Planning Department notes that with the exception of Building Type "C," none of the buildings appear to have windows in the 3rd story. Finally, the Planning Department notes that any mechanical equipment including air conditioning condensers should be shown on final site plans.

As the existing single-family residence is less than 50 years old, the petitioner does not have to file or request a waiver from filing with the Newton

Historical Commission (*to determine if it is historically significant*) in order to demolish it. The building was built in 1963 and does not appear to have any historically significant attributes worth preserving.

The petitioner is proposing 21 surface parking stalls located towards the center of the site. Although the surface stalls may be viewed as inconvenient to some, they greatly reduce the amount of structure built on site and may help to foster neighborly interaction and a sense of community among the residents.

The petitioner should be commended for incorporating many sustainable design and energy conservation features into the proposed project specifications. The petitioner worked with the Green Roundtable as a consultant and some of the design elements worth noting include:

- Insulation and air sealing to produce a tight building envelope
- Efficient heating, hot water, and other mechanical systems
- Efficient lighting and appliances
- Fly-ash concrete foundations and basement floor slabs
- High performance windows
- Low VOC interior paint and finishes
- Renewable interior material options such as Marmoleum
- Water conserving strategies such as dual-flush toilets and low-flow faucets and showerheads

b. Physical characteristics of the surrounding land

The predominant building types in the neighborhood are 1- and 2-story, single- and two-family residences. Other uses include some large apartment buildings on the north side of Lexington Street as well as the Burr Elementary School. Flowed Meadow Conservation Area and the former City landfill are located across Lexington Street northwest of the subject property.

c. Adequacy of access to the site and adequacy of parking arrangements

The site has been designed for two-way access from Lexington Street, although there is access through Albert Street for emergency vehicles only. The proposed driveway is 24 ft. at Lexington Street, but narrows to 20 feet and then further to 16 feet towards Albert Road. The proposed single-family units both have tandem parking located between them. The duplexes are served by surface parking stalls located towards the center of the site. The site will include a total of 21 parking spaces for the ten units.

The Planning Department believes that the proposed number of parking stalls should be appropriate; however, none of the stalls appear to meet AAB (Architectural Access Board) accessible standards on current plans. The petitioner has indicated that they will provide one handicap stall close to the entrance of Building #2 (the accessible unit) and one handicap stall on the opposite side of the parking lot. *Prior to the issuance of a building permit, the*

petitioner should submit revised plans addressing all accessibility concerns. Additionally, as much of the site as possible should be accessible and should accommodate wheelchair access. The petitioner should clarify if the pathway can accommodate a wheelchair and if someone with mobility impairment can access the two recycling and reuse sheds.

Although the petitioner is seeking a waiver for reduced stall length (18 ft. where 19 ft. is required), the petitioner is proposing a maneuvering aisle width of 24 feet and the Planning Department does not believe access will be a problem.

d. Adequacy of open areas

The petitioner has maintained an adequate amount of open space, given the constraints of the site. Many of the duplex units have a generous front or side yard and the development backs up onto a park, adding to an enhanced sense of open space on-site. Additionally, the subject site is adjacent to a large tract of City-owned open space.

3. The economic need to require additional housing units

a. General feasibility of the project

The general feasibility of the proposed Parkview Homes project is significantly strengthened by three factors:

- The development team's previous housing development experience;
- The petitioner has secured 100% of the funds (federal and Community Preservation Funds) necessary to develop the project; and
- The reasonable cost of the development.

The petitioner has permitted over 8,000 housing units in over 100 Massachusetts communities. SEB, LLC will serve as project manager throughout the construction and sell-out period (approximately one year from spring 2010 through spring 2011). The petitioner will also serve as lottery agent ensuring that the lottery process complies with Newton's local preference policy, as well as requirements under the Massachusetts Department of Housing and Community Development's (DHCD) Local Initiative Program (LIP).

The petitioner has secured a total of \$2,956,866 in federal and Community Preservation Funds for this project. The petitioner does not anticipate the need for additional financing.

DHCD approved the petitioner's application for site eligibility determination under LIP (*ATTACHMENT "E"*). *The approval is based, in part, on DHCD's analysis that the development budget appears "financially feasible in the context of the Newton housing market" and the "initial pro forma appears financially feasible and consistent with cost examination and limitations on profits and distributions on the basis of estimated development costs."*

The amount of HOME Program funding was approved as part of a subsidy layering analysis provided by the City's WestMetro HOME Consortium consultants.

- b. Limitations imposed by the financing agency with respect to size or character of the development, amount or nature of the subsidy and permissible rentals and tenant limits

In its site eligibility determination letter, DHCD approve the proposed project based on the following principle elements:

The project will consist of ten for-sale units, six of which will be eligible for inclusion in the City's SHI. The six units will be marketed and sold to eligible households whose annual income may not exceed 80% of area median income, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development. The six units will be priced at 75% of area median income rather than the 70% of the area median income required of LIP units. Four of the units will be priced to be affordable to households whose gross annual income is less than 100% of area median income.

The site approval letter also identifies nine conditions that the petitioner must meet for final approval from DHCD.

- c. Changes in rents and units sizes of the development that would be necessary to accommodate the requirements and regulations sought to be imposed

The proposed project is a for-sale development (not rental) and as proposed, meets the requirements of the Local Initiatives Program. The development exceeds the minimum number of required affordable units (three units) by providing six units affordable to households at 80% of area median income.

4. *Local supply of affordable housing and current projects to add to supply.*

The amount of subsidized housing in the City does not meet either of the first two criteria. The current number of subsidized units in the City is 2,417 or 7.60 % of the City's total number of housing units (31,807 units according to the 2000 U.S. Census). The amount of land (excluding publicly-owned land) that contains subsidized housing is approximately 26 acres and represents less than one-half of one percent (58.66 acres) of the City's total land area of 11,731 acres.

The proposed development would not result in development of housing on sites that constitute more than 3/10 of one percent of the total land area in one year (21.68 acres).

The following table shows the 2002 and 2009 completed projects to be added to the Massachusetts Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory:

Completed projects added to the
MA Department of Housing and Community Development
Chapter 40B Subsidized Housing Inventory
2002 Through 2009

| | | |
|--|------------------|--------------------|
| 21 Foster Street | 8 units | 0.48 acres |
| 90 Christina Street | 5 units | 0.82 acres |
| Avalon at Upper Falls 99-109 Needham Street | 294 units | 8.10 acres |
| 18-20 Cambria Road | 2 units | .11 acres |
| Nonantum Village Place 241 Watertown Street | 35 units | 1.9 acres |
| 19 West Street | 5 units | 0.13 acres |
| 45 Pelham Street | 10 units | 0.31 acres |
| 391 Walnut Street | 2 units | 0.9 acres |
| 76 Webster Park | 3 units | 0.3 acres |
| 20-22 Falmouth Road | 2 units | 0.12 acres |
| 163 Jackson Road | 2 units | 0.12 acres |
| 173 Tremont Street | 8 units | 0.09 acres |
| 248 Elliot Street | 3 units | 0.41 acres |
| 52-54 Wyman Street | 10 units | 0.55 acres |
| 13-15 Wiltshire Road | 5 units | 0.12 acres |
| 11-13 Cambria Road | 2 units | 0.14 acres |
| 1093-1101 Chestnut Street | 6 units | 0.6 acres |
| Avalon at Chestnut Hill 160 Boylston Street | 204 units | 4.9 acres |
| Arborpoint at Woodland Station | 180 units | 3.86 acres |
| Covenant Residences on Commonwealth | 15 units | 1.45 acres |
| 29 Coyne Road | 1 unit | .3 acres |
| TOTAL | 802 units | 25.71 acres |

C. Landscaping, Lighting, and Fencing

The landscape plan depicts the retention of some existing trees along property lines for screening purposes. However, the petitioner has not identified the species of any trees to either be preserved or removed. The proposed plan is not specific in the type or size of trees to be planted and does not appear to meet the landscaping requirements of Section 30-19 for which the petitioner is requesting a waiver. Additional plantings along the

driveway from Lexington Street and throughout the site may help to integrate the proposed development into the existing neighborhood.

The petitioner did not submit a Photometric Plan showing proposed lighting on-site. Prior to the issuance of a building permit, the Planning Department recommends the petitioner submit a lighting plan showing any lighting on site and further recommends that fixtures be residential in scale.

The petitioner is proposing fencing around the majority of the site, but has not specified the height or type of fencing to be installed. Prior to the issuance of a building permit, the Planning Department recommends the petitioner submit a fencing proposal to the Director of Planning and Development for review and approval, including screening of the dumpster.

V. TECHNICAL CONSIDERATIONS

A. Dimensional Controls – Section 30-15

The issuance of a Comprehensive Permit supersedes applicable local zoning requirements. The following table compares the relief needed from the following provisions of Section 30-15, Table 1 for single dwelling units in a Single Residence 3 District:

| Section 30-15 (Table 1) Single Residence 3 | Requirement | Existing | Proposed |
|---|----------------|----------------|----------------------|
| Min. Lot Area | 10,000 sq. ft. | 49,960 sq. ft. | 49,960 sq. ft. |
| Lot Area Per Unit | 10,000 sq. ft. | 49,960 sq. ft. | 4,996 sq. ft. |
| Building Height | 30 ft. | NA | 25.8 ft. |
| Building Stories | 2½ stories | 1 story | 2 stories |
| Floor Area Ratio | 0.35 | 0.03 | 0.29 |
| Frontage | 80 ft. | 80 ft. | 80 ft. |
| Front Setback | 30 ft. | ~140 ft. | 16.3 ft. |
| Side Setback | 10 ft. | ~24 ft. | 13 ft. |
| Rear Setback | 15 ft. | ~130 ft. | 17.6 ft. |
| Max. Lot Coverage | 30% | NA | 18% |
| Min. Open Space | 50% | NA | 53% |

As shown in the above table, the petitioner will need relief from the required 30-foot front setback. The proposed structures and lot will meet all other dimensional controls established in Section 30-15, as shown on the plans submitted to date. However, the City has requested that one of the dwelling units be handicap-accessible. The petitioner has agreed and will redesign Building #2 to be one-story and fully handicapped-accessible. This change will necessarily increase the footprint of the building and, as a result, change (slightly) the lot coverage and open space calculations. Since the building has not yet been redesigned, the lot coverage and open space figures are not available. For comparison purposes the Planning Department notes that the by-right alternative is one

large single-family dwelling, although it *may* be possible to subdivide the site into more than one lot.

B. Parking Requirements – Section 30-19

The following chart compares the submitted plans to the applicable provisions of the Parking Ordinance, Section 30-19, for parking facilities containing more than five stalls:

| Section 30 –19 | Requirement | Proposed |
|---|---------------------------|-------------------|
| Min. # of Parking Stalls | 2 stalls/unit = 20 stalls | 21 stalls |
| Min. Stall Width | 9 ft. | 9 ft. |
| Min Stall Length | 19 ft. | 18 ft. |
| Front setback | 30 ft. | > 30 ft. |
| Side yard setback | 10 ft. | ~2 ft. |
| Rear yard setback | 15 ft. | > 15 ft. |
| Setback from a structure containing dwelling units | 5 ft. | < 5 ft. |
| Min. parking setback from the street | 5 ft. | Complies |
| Max. Driveway Entrance | 25 ft. | 27 ft. |

As shown in the above table the proposed parking facility does not meet the technical requirements under Section 30-19 with respect to minimum stall length, parking in the side setback, parking at least five feet from a structure containing dwelling units, and maximum driveway width. The Planning Department also notes that there are no handicap parking stalls shown on the plans where one is required. The petitioner has indicated that at least one compliant handicap stall will be provided. Finally the Planning Department notes the petitioner is not providing bicycle racks or storage for the proposed units. The Planning Department recommends that the petitioner consider providing a bike rack on site instead of seeking a waiver from this requirement.

VI. CONCLUSION AND RECOMMENDATION

The Planning Department believes the site is suitable to be developed with ten dwelling units with minimal impacts on the surrounding neighborhood. The petitioner should be commended for incorporating many sustainable design and energy conservation features into the proposed project specifications and for proposing nine (out of ten) three-bedroom for-sale units. The Planning Department believes that the proposal is consistent with the *Newton Comprehensive Plan*, as it will increase the City's affordable housing stock. Finally, the clean-up of any contaminated soils will enhance the existing residential neighborhood.

Should the Zoning Board of Appeals vote to approve this comprehensive permit, the Planning Department would recommend the following conditions:

1. That preference shall be given to local Newton residents for the subsidized units, up to the maximum extent allowed by law.
2. That deed restrictions shall be placed on all units providing for affordability in perpetuity. Prior to the issuance of any certificates of occupancy, the petitioner shall submit the language for the proposed deed restrictions to the Law Department for review, and shall record the approved restrictions with the Middlesex County Registry of Deed.
3. That an emergency ingress/ egress leading from and to Albert Road with Knox lock shall be provided and the gate shall be kept free of snow and debris at all times.
4. That the petitioner shall provide a bike rack on site.
5. That the driveway, parking facilities, and adjacent sidewalks shall be constructed with granite curbing.
6. That the petitioner shall make every effort to utilize building materials and systems that comply with the NStar "Energy Star" standards, but at a minimum, all new appliances installed shall meet the NStar "Energy Star" standards program.
7. That all utilities shall be placed underground from the street.
8. That the landscaping shown on the approved plan shall be maintained in good condition. The plantings shall be inspected annually, and any plant material that has become diseased or dies shall be replaced in a timely manner with similar material.
9. That no outside light shall spillover onto abutting properties, and all lighting fixtures shall be shielded and Metal Halide lighting or equivalent shall be used.
10. That prior to the issuance of a building permit the petitioner should submit to the Director of Planning and Development for review and approval:
 - a. a revised site plan addressing all accessibility concerns;
 - b. a lighting plan showing any lighting on site and that fixtures be residential in scale;
 - c. a revised landscaping plan;
 - d. any fencing details, including screening of the dumpster;
 - e. all final elevations, proposed façade colors, and proposed roof materials and color; and
 - f. a photometric plan with specifications of the lighting fixtures and lamps.
11. That prior to the issuance of any building permits, the petitioner shall submit to the Fire Department for review and approval final site and building plans, which shall include all required information on proposed sprinkler and alarm systems.
12. That prior to the issuance of any building permits, the petitioner shall submit to the City Engineer for review and approval final utility, grading and drainage plans, all utilities shall be underground from the street.

ATTACHMENTS

- ATTACHMENT A:** *Petitioner's List of Zoning and Non-Zoning Relief Requested*
ATTACHMENT B: *Neighborhood Comparison Chart Prepared by Planning Department*
ATTACHMENT C: *Letter from Newton Housing Partnership, dated November 12, 2009*
ATTACHMENT D: *Memo from Asst. Fire Chief Proia, dated October 30, 2009*
ATTACHMENT E: *Determination of Site Eligibility under LIP Letter dated June 23, 2009*
ATTACHMENT F: *Land Use Map*
ATTACHMENT G: *Zoning Map*

The Applicant requests that the Zoning Board of Appeals grant a comprehensive permit in lieu of the following permits, licenses and approvals under the Newton Revised Ordinances of 2001, as amended, of which Chapter 30 is the Zoning Ordinance.

Maximum width of entrance and exit driveways is permitted to be twenty-five (25) feet. The applicant proposes twenty-seven (27) feet.

5. Under 30-19 (h) 5 (a) which requires parking facilities be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other vehicle. The Applicant has proposed two driveways between building #1 and building #2 that feature tandem parking spaces.
 6. Under 30-19 (h) 4 (a) which requires the back exit drive to be twenty feet wide. The Applicant does not believe this provision applies to this development as the back driveway is an exit for emergency vehicles only and will be locked by a Knox box. It will not serve, or be allowed to serve as an entrance or exit to residents and/or any other neighboring residents. Moreover, it will likely be only 1 way in or out, depending on the preference of the Newton Fire Department, which has signed off on the plan as provided.
 7. Under §30-19(i)(2) as to interior landscaping requirements for outdoor parking facilities of 20 stalls or more under, (if necessary).
 8. Under §30-19(j)(2) as the City Engineer will review the Applicant's plans in connection with the Application
 8. Waiver of the bicycle location provisions of §30-19(k)(2)
 10. Any other relief which may be necessary or appropriate and may be granted by the Board of Aldermen under §30-19 (m)
- D. Signage: The Applicant seeks a comprehensive permit in lieu of a special permit under §30-20 (l) to permit for a freestanding sign. The Applicant also seeks a waiver of sign permit procedures under §30-20(c)(1) and insofar as applicable any hearing or procedure before the Urban Design and Beautification Commission.
- E. Site Plan Approval: The Applicant requests a comprehensive permit in lieu of site plan approval required under §30-23 in connection with special permits granted under §30-24.

NON-ZONING ORDINANCES

- F. Tree Ordinance - Revised Ordinances §20-31 et seq.

Revised Ordinances §20-31 et seq. provide a requirement for a permit and the payment of fees for removal of trees from the property under certain circumstances. To the extent that any permit or fee payment would otherwise be required under Revised Ordinances §20-31 et seq., the Applicant requests a comprehensive permit in lieu of a waiver of such permit and fees.

- G. Demolition Delay – Revised Ordinances §22-44

Revised Ordinances §22-44 provides for a review by the Newton Historic Commission and the possible imposition of a demolition delay for demolition of historically significant buildings. To the extent the existing house or other elements of the Property may be deemed to fall within the jurisdiction of the Newton Historic Commission under Revised Ordinances §22-44, a comprehensive permit is sought in lieu of a determination of the Newton Historic Commission that such structures or features are not preferably preserved.

H. Light Ordinance

Revised Ordinances §§20-23 - 20-28 provided limitations on installation of light sources which do not conform to the criteria stated. §20-26 provides for waivers to be granted by the Planning and Development Board. To the extent that any light source may not conform to the requirements of §20-24 or that the requirements of that section may be inconsistent with § 30-19 the Applicant seeks a comprehensive permit in lieu of any waiver requested under §30-26.

11/19/09 (3)

Comparison of Project Dimensions and Density to
(1) Single Family-Residence 3 District Dimensional and Density Regulations for Residential Use

| <u>CATEGORIES</u> | <u>SINGLE FAMILY RESIDENCE 3 REQUIREMENTS</u> | <u>Parkview Homes</u> |
|--|---|---------------------------|
| <i>Minimum Required Lot Area</i> | <i>10,000 sq. ft.</i> | <i>49,960 sq. ft.</i> |
| <i>Lot Area per unit:</i> | <i>10,000 sq. ft./unit</i> | <i>4,950 sq. ft./unit</i> |
| <i>Lot Frontage:</i> | <i>80'</i> | <i>80</i> |
| <i>Setbacks:</i> | | |
| <i>Front:</i> | <i>30'</i> | <i>16.3'</i> |
| <i>Side:</i> | <i>10'</i> | <i>13'</i> |
| <i>Rear:</i> | <i>15'</i> | <i>17.6'</i> |
| <i>Height:</i> | <i>30'</i> | <i>29'</i> |
| <i>Building Lot Coverage:</i> | <i>30%</i> | <i>18%</i> |
| <i>Minimum Usable Open Space:</i> | <i>50%</i> | <i>53%</i> |

| <i>Neighborhood Comparison Chart (Prepared by Planning Department)</i> | | | | | | | | | | |
|--|--------------|----------------------|---------------|-----------|----------------------|--------------------|--------------------------------|-----------------|---------------|---------------|
| 192 Lexington Street and Vicinity | | | | | | | | | | |
| # | Street | Approx. Yr. Built | Lot Size | # Units | Lot Area Per Unit | Approx. Sq. Ft. | Approx. Sq. Ft. Per Unit | Approx. FAR | Material | Style |
| 95 | ALBERT RD | 1952 | 7,093 | 1 | 7,093 | 1524 | 1,524 | 0.215 | Vinyl siding | Cape Cod |
| 98 | ALBERT RD | 1953 | 15,350 | 1 | 15,350 | 1620 | 1,620 | 0.106 | Brick/masonry | Cape Cod |
| 103 | ALBERT RD | 1963 | 10,030 | 1 | 10,030 | 3153 | 3,153 | 0.314 | Vinyl siding | Colonial |
| 104 | ALBERT RD | 1952 | 13,359 | 1 | 13,359 | 2684 | 2,684 | 0.201 | Vinyl siding | Colonial |
| 109 | ALBERT RD | 1965 | 10,048 | 1 | 10,048 | 1148 | 1,148 | 0.114 | Vinyl siding | Raised ranch |
| 110 | ALBERT RD | 1955 | 10,804 | 1 | 10,804 | 1559 | 1,559 | 0.144 | Wood shingle | Colonial |
| 115 | ALBERT RD | 1964 | 10,183 | 1 | 10,183 | 1222 | 1,222 | 0.12 | Vinyl siding | Split level |
| 116 | ALBERT RD | 1955 | 11,843 | 1 | 11,843 | 1947 | 1,947 | 0.164 | Vinyl siding | Colonial |
| 158 | LEXINGTON ST | 1920 | 7,009 | 1 | 7,009 | 1436 | 1,436 | 0.205 | Vinyl siding | Old Style |
| 160 | LEXINGTON ST | 1905 | 5,334 | 1 | 5,334 | 672 | 672 | 0.126 | Vinyl siding | Old Style |
| 166 | LEXINGTON ST | 1966 | 10,003 | 1 | 10,003 | 1102 | 1,102 | 0.11 | Vinyl siding | Split level |
| 174 | LEXINGTON ST | 1965 | 10,022 | 1 | 10,022 | 1221 | 1,221 | 0.122 | Brick veneer | Raised ranch |
| 181 | LEXINGTON ST | 1970 | 44,780 | 30 | 1,493 | 16380 | 546 | 0.366 | Brick | Low-rise apt. |
| 188 | LEXINGTON ST | 1952 | 7,000 | 1 | 7,000 | 1344 | 1,344 | 0.192 | Vinyl siding | Cape Cod |
| 192 | LEXINGTON ST | 1963 | 49,959 | 1 | 49,959 | 2140 | 2,140 | 0.043 | Wood shingle | Ranch |
| 199 | LEXINGTON ST | 1978 | 40,189 | 20 | 2,009 | 19368 | 968 | 0.482 | Brick | Low-rise apt. |
| 226 | LEXINGTON ST | 1996 | 14,820 | 1 | 14,820 | 2707 | 2,707 | 0.183 | Vinyl siding | Colonial |
| 236 | LEXINGTON ST | 1996 | 13,404 | 1 | 13,404 | 2712 | 2,712 | 0.202 | Vinyl siding | Colonial |
| 155-163 | LEXINGTON ST | 1970 | 80,589 | 52 | 1,550 | 31534 | 606 | 0.391 | Brick | Low-rise apt. |
| 180-182 | LEXINGTON ST | 1960 | 10,050 | 2 | 5,025 | 2548 | 1,274 | 0.254 | Vinyl siding | Two family |
| 198-200 | LEXINGTON ST | 1971 | 10,192 | 2 | 5,096 | 2744 | 1,372 | 0.269 | Vinyl siding | Duplex |
| 203-205 | LEXINGTON ST | 1880 | 16,000 | 3 | 5,333 | 3898 | 1,299 | 0.244 | Vinyl siding | Old Style |
| 206-208 | LEXINGTON ST | 1974 | 10,574 | 2 | 5,287 | 2544 | 1,272 | 0.241 | Vinyl siding | Duplex |
| Average | | 1958 | 18202 | 6 | 10,089 | 4661 | 1,545 | 0.209 | | |
| 192 Lexington Proposed | | | 49,959 | 10 | 4,996 | 14,150 | 1,415 | 0.283232 | | |

NEWTON HOUSING PARTNERS_____

Newton Housing & Community Development Program
Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459.
Phone 617-796-1120. TDD/TTY 617-796-7089

November 12, 2009

Newton Zoning Board of Appeals
c/o Ms. Sherri Lougee, Secretary
1000 Commonwealth Avenue,
Newton, MA 02459

Re: Proposed Comprehensive Permit for 192 Lexington Street

Dear Board members:

The Newton Housing Partnership has reviewed the proposal by S-E-B for approval of a Comprehensive Permit under Chapter 40B to develop ten condominium units at 192 Lexington Street, six of which will be reserved for households having incomes no higher than 80% of the Area Median Income, and the remaining four to be reserved for households having incomes no higher than 100% of the Area Median Income. The Partnership has met frequently with the developers from the earliest stages of concept development, and members have visited the site. At its November 12, 2009 meeting the Partnership voted its recommendation for approval of the Comprehensive Permit for the development, with the conditions noted below.

The housing is mixed-income with all of the units to be priced below market, unprecedented in Newton by a for-profit developer. The units are contained in small-scale buildings abutting public land, with a sensitively designed site plan and efficiently designed units. The developers have made an exemplary effort on green building and sustainable design to serve both the affordability of the units over time for future occupants and to serve broader environmental interests. Their public outreach has been exemplary, including their being highly responsive to Partnership comments and suggestions.

Having no market-rate units in the development to help carry development costs inevitably means that the necessary level of public funding is large. However, in this case at just about \$300,000 per below-market unit, that level of public funds is not inconsistent with that provided to a number of other developments in Newton in recent years.

The conditions for our approval of the proposal are these.

- 1) The marketing and resident selection process is to be consistent with Appendix C of the Fair Housing Task Force's *Fair Housing Action Plan* dated November, 2008. That process is consistent with the provisions of Newton Zoning Section 30-24(f), and is intended as a standard provision for all Newton housing programs.

Newton Zoning Board of Appeals

November 12, 2009

Page 2.

- 2) One unit in the development is to be designated to be made fully accessible for occupancy by a person having disabilities in the event that an income-qualified applicant household has a member having a disability requiring such design features, with any necessary adaptations to be made at the expense of the developer.
- 3) Per the Appendix C process, priority for the designated unit will go to the first qualified applicant drawn in the project lottery having need for accessibility features in the unit, regardless of whether income qualified at the 80% or the 100% of Area Median Income level. If there are no such applicants, no unit will be designed and built so as to be fully accessible.
- 4) Units for any additional qualified handicapped applicants selected in the lottery shall be provided with specific design features as required for accessibility, with costs included in the mortgage amount only to the extent allowable as provided by 24 CFR 8.29.
- 5) Any units adapted for accessibility for the disabled are to be deed restricted (if the Newton Law Department agrees) to assure that preference (but not an exclusive opportunity for the unit) for the disabled would continue upon later resale.

This development promises to be exemplary with regard to having all of its units priced below market so as to be relatively affordable, and with regard to its commitments to "Green" development, and with regard to its explicit commitment to accessibility for the disabled. We hope that your Board will agree. If you have further questions for the Partnership please let me know.

Very truly yours,



Philip B. Herr, Chairman

Cc: Robert Engler, SEB, LLC

Trisha Guditz, Housing Rehabilitation Manager



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS
FIRE DEPARTMENT HEADQUARTERS

1164 Centre Street, Newton Center, MA 02459-1584
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230
FAX: (617) 796-2211 EMERGENCY: 911



Joseph E. LaCroix
Chief

October 30, 2009

Candace Havens
Planning Department
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, Ma 02459

Re: 192 Lexington Street

Dear Ms. Havens,

We have reviewed the site plans for the proposed 10 unit residential complex at 192 Lexington. This is to advise you that the Newton Fire Department has stamped the plans and approves the site layout for accessibility and water with the following conditions:

- Buildings 3, 4, 5 and 6 have a sprinkler system installed in accordance with NFPA 13D.
- A fire hydrant is installed along the roadway servicing the property.
- An emergency egress leading to Albert Road with a Knox lock is provided. The gate shall be kept free of snow and debris at all times.
- The roadway is a minimum of 16' at its narrowest point.

We will of course be reviewing the plans relative to Fire Prevention matters during the building permit process.

If you have any questions, please do not hesitate to call me at 796-2210.

Sincerely,

Bruce A. Proia
Chief of Operations

Cc: Mr. Jeff Engler
Deputy Chief Michael Castro, Fire Prevention



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks, Undersecretary

June 23, 2009

Robert Engler ✓
SEB, LLC
165 Chestnut Hill Avenue #2
Brighton, MA 02135

The Honorable David Cohen
Mayor, City of Newton
1000 Commonwealth Avenue
Newton, MA 02453

RE: 192 Lexington Street, Newton, MA
Determination of Site Eligibility under the Local Initiative Program (LIP)

Dear Mr. Engler and Mayor Cohen,

I am pleased to inform you that your application for site eligibility determination under the Local Initiative Program (LIP) for the proposed 192 Lexington Street project in Newton, Massachusetts, has been approved. This approval is based on your application that sets forth a plan for the development of ten (10) homeownership units. The proposed sales prices of the LIP units are generally consistent with the standards for affordable housing to be included in a community's Chapter 40B affordable housing stock. We note that the project developer has a Purchase and Sales agreement for the site.

As part of the review process, DHCD staff has performed an on-site inspection of the proposed project site. The Department of Housing and Community Development (DHCD) has made the following findings:

1. The proposed project appears generally eligible under the requirements of the Local Initiative Program, subject to final program review and approval;
2. The site of the proposed project is generally appropriate for residential development;
3. The conceptual plan is generally appropriate for the site on which is located;
4. The proposed project appears financially feasible in the context of the Newton housing market;
5. The initial pro forma for the project appears financially feasible and consistent with cost examination and limitations on profits and distributions on the basis of estimated development costs;
6. The project developer and the development team meet the general eligibility standards of the Local Initiative Program;
7. The project developer controls the site.

The proposed project must comply with all state and local codes not specifically exempted by a comprehensive permit.

If a comprehensive permit is granted, a copy should be promptly provided to DHCD. The DHCD legal office will review the comprehensive permit and other project documentation. Additional information may be requested as is deemed necessary. Following the issuance of the comprehensive permit, the specifics of this project must be formalized in a regulatory agreement signed by the municipality, the project sponsor, and DHCD. The regulatory agreement must be signed and recorded prior to starting construction.

As stated in the application, the 192 Lexington Street will consist of ten (10) units, six (6) of which will be eligible for inclusion in the city's subsidized housing inventory. The affordable units will be marketed and sold to eligible households whose annual income may not exceed 80% of area median income, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development.

The project developer with the City's support has requested that the 6 (six) affordable units be priced at 75% of Area Median Income (AMI) rather than the 70% of AMI that are required of LIP units. Six affordable units represent 60% of the project units, well above the 25% required as part of a comprehensive permit. DHCD will allow this request. This is based upon: 1) the 4 (four) market units will be priced between 80% to 10% of AMI and 2) the green development features that the developer has proposed to incorporate within the project design. DHCD shall be notified, and approval sought, if any deviations from these features are proposed.

The conditions that must be met prior to final DHCD approval include:

1. A final affirmative fair marketing and lottery plan with related forms shall be submitted that reflects LIP requirements including consistency with the *Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing Plans*;
2. Any changes to the application it has just reviewed and approved, including but not limited to alternations in unit mix, sales price, development team, unit design, site plan or financial pro forma, must be approved by DHCD;
3. Documentation of the public funds committed to this project shall be submitted to DHCD. This includes Community Preservation Act, HOME and CDBG funds;
4. Documentation of the availability of construction financing for this project shall be submitted to DHCD;
5. The green energy features that will be incorporated in the development will be submitted to DHCD;
6. The Schedule of Beneficial Interests that will be included in the condominium master deed shall be submitted, and the beneficial interests for the LIP units must reflect their restricted value and the maximum initial condominium fees approved by DHCD;

7. In accordance with the *Comprehensive Permit Guidelines*, Section IV (D), the project developer shall provide a financial surety through a letter of credit, bond or cash account to ensure completion of the cost examination and distribution of excess funds required by 760 CMR 56.04(8);
8. The project must be organized and operated so as not to violate the state anti-discrimination statute (M.G.L. c151B) or the Federal Fair Housing statute (42 U.S.C. s.3601 et seq.). No restriction on occupancy may be imposed on the affordable units other than those created by state or local health and safety laws regulating the number of occupants in dwelling units; and,
9. The project developer will be completing a Phase I and II 21E Study. The results of that study shall be submitted to DHCD.

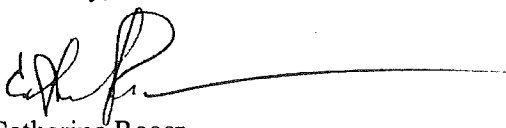
As 192 Lexington Street nears completion of construction, DHCD staff may visit the site to ensure that the development meets program guidelines.

When all the units have received Certificates of Occupancy, the developer must submit to both DHCD and the City of Newton a project cost examination prepared by a certified public accountant to meet cost certification requirements. The specifics of the cost certification obligation will be contained in the regulatory agreement to be executed by the municipality, the project sponsor and DHCD.

This letter shall expire two years from this date or on June 23, 2011 unless a comprehensive permit has been issued.

We congratulate the City of Newton and the project sponsor on their efforts to work together to increase the City's supply of affordable housing. If you have any questions as you proceed with the project, please call Toni Coyne Hall at 617-573-1351.

Sincerely,



Catherine Racer
Associate Director

Enc.

cc: Michael Kruse, Newton Planning and Development
Philip Herr, Newton Housing Partnership
Bernard F. Shadrawy, Zoning Board of Appeals
Schlesinger and Buchbinder LLP
Office of the Chief Counsel, DHCD

Land Use Map

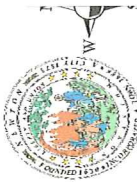
192 Lexington St.
and Vicinity

City of Newton,
Massachusetts

Legend

- Building Outlines
- Single Family Residential
- Two Family Residential
- Condominiums
- Other Residential
- Mixed Use
- Commercial
- Industrial
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt
- Unspecified

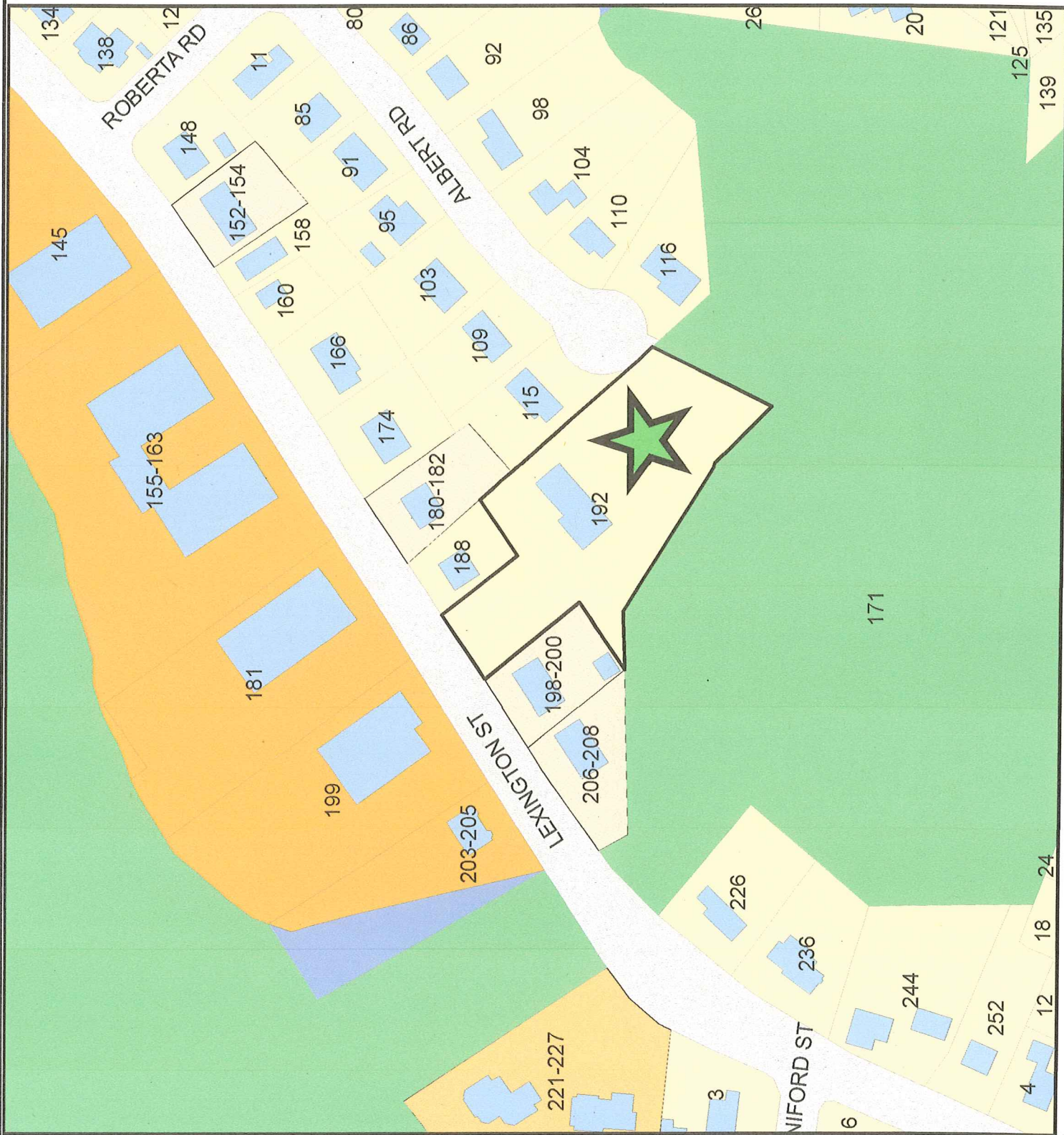
ATTACHMENT F



The information on this map is for informational purposes only. The City of Newton cannot guarantee the accuracy of the information. Each user of the information is responsible for determining its suitability for their own purposes. City departments do not approve applications based on this map.

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MAP DATE: November 2011



Zoning Map

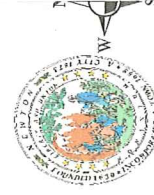
192 Lexington St. and Vicinity

City of Newton,
Massachusetts

Legend

- Building Outlines
- Single Res. 1
- Single Res. 2
- Single Res. 3
- Business 1
- Business 2
- Business 4
- Business 5
- Limited Manufacturing
- Manufacturing
- Multi-Res. 1
- Multi-Res. 2
- Multi-Res. 3
- Multi-Res. 4
- Mixed Use 1
- Mixed Use 2
- OS/Rec.
- Public Use

ATTACHMENT G



The information on this map is for informational purposes only. The City of Newton cannot guarantee the accuracy of the information. Each user of the information is responsible for determining its suitability for their own purpose. City departments do not approve applications based on this map.



MAP DATE: Nov 2011